



UNITED NATIONS
NATIONS UNIES

ICTR-00-55C-T
6-9-2011
(5074-5070)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Lee Gacuiga Muthoga, *Presiding*
Seon Ki Park
Robert Fremr

Registrar: Adama Dieng

Date: 6 September 2011

THE PROSECUTOR

v.

Ildéphonse NIZEYIMANA

CASE NO. ICTR-00-55C-T

JUDICIAL RECORDS ARCHIVES
UNICTR

2011 SEP - 6 A 10: 34

DECISION ON THE CONDUCT OF A SITE VISIT

Office of the Prosecution:
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INTRODUCTION

1. The trial commenced on 17 January 2011 with the opening statements of both the Prosecution and the Defence. The Prosecution closed its case-in-chief on 25 February 2011, after having called 38 witnesses. The Defence closed its case on 16 June 2011, after having called 38 witnesses.

2. On 25 May 2011, the Office of the Prosecutor ("the Prosecution") filed submissions seeking the Chamber's leave to conduct a site visit.¹ The Prosecution submitted, *inter alia*, that a site visit would assist the Chamber in its assessment of the evidence.² The Prosecution further listed its preferences as to the modalities of the site visit and the precise locations to be visited.³

3. On 26 May 2011, the Chamber orally directed the parties to file a joint itinerary.⁴

4. On 26 May 2011, Defence team of the Accused, Ildéphonse Nizeyimana ("the Defence" and "the Accused" respectively) voiced their concern as to their own security in Rwanda, but provided the Chamber with an indication as to their preferences regarding the dates for the site visit.⁵

5. On 2 June 2011, the Defence filed its submissions on the site visit.⁶ The Defence submission included the locations cited by the Prosecution, as well as the Defence agreement or disagreement with each particular location.⁷ The Defence further noted that it may file a further request to visit additional sites.⁸

6. On 7 June 2011, the Prosecution filed its response to the Defence Submissions, including further comments on the various locations disputed or added by the Defence in the Defence submissions.⁹

7. On 14 July 2011, the Chamber informally communicated the Chamber's guidelines regarding the anticipated scheduling of the proceedings to the parties via e-mail.¹⁰ The

¹ Prosecutor's Submissions Regarding Pending Site Visit ("Prosecution Submissions"), 25 May 2011.

² Prosecution Submissions, paras. 12, 24.

³ Prosecution Submissions, paras. 12-23.

⁴ T. 26 May 2011, p. 8. (Status conference).

⁵ T. 26 May 2011, p. 7. (Status conference).

⁶ Defence Submissions Regarding the Site Visit ("Defence Submissions"), 2 June 2011.

⁷ Defence Submissions, pp. 4-5.

⁸ Defence Submissions, para. 4.

⁹ Prosecutor's Response to Defence Submissions Regarding the Site Visit ("Prosecution Response"), 7 June 2011, para. 7.

¹⁰ E-mail entitled "Chamber's Informal Guidelines on Potential Scheduling Time-Line," by Daniella Ku, 14 July 2011.

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Chamber informed the parties that a site visit would take place around the first week of October 2011.¹¹

8. On 14 July 2011, the Defence filed a letter outlining perceived problems with the Chamber's informal scheduling guidelines, including the timing of the site visit.¹² In particular, the Defence noted that counsel has "serious scheduling difficulties" with respect to the first two weeks of October 2011.¹³

9. On 4 August 2011, the Prosecution filed a motion requesting the Chamber to issue a formal scheduling order to enable the parties to facilitate the planning of their cases and to "avoid further delays of the Trial."¹⁴

10. On 9 August 2011, the Defence filed its response.¹⁵ The Defence submits that the Prosecution's proposed schedule was unworkable and would violate the Accused's right to be afforded adequate time and facilities for the preparation of his defence.¹⁶

11. On 19 August 2011, the Chamber filed a scheduling order, indicating that the site visit is to take place the first week of October 2011.¹⁷

DELIBERATIONS

12. Rule 4 of the Rules of Procedure and Evidence (the "Rules") provides that "[a] Chamber or Judge may exercise their functions away from the Seat of the Tribunal, if so authorised by the President in the interests of justice."

13. The Chamber recalls that the need for a site visit must be considered in light of the particular circumstances of each case.¹⁸ Furthermore, a site visit should be conducted at a time when it will be instrumental to the discovery of the truth and the determination of the matter before the Chamber.¹⁹

¹¹ *Ibid.*

¹² Letter entitled "Closing brief and scheduling, Prosecutor vs Ildéphonse Nizeyimana," ("Defence Letter") by John Philpot, 14 July 2011.

¹³ *Ibid.*

¹⁴ Prosecutor's Motion to Request a Scheduling Order and to Order the Defence to Request a Rejoinder Prior to Hearing the Rebuttal Witnesses ("Prosecution Motion"), 4 August 2011, para. 8.

¹⁵ Defence Response to Prosecutor's Motion to Request a Scheduling Order and an Order to the Defence ("Defence Response"), 9 August 2011.

¹⁶ Defence Response, paras. 5-17.

¹⁷ Scheduling Order, 19 August 2011, para. 7.

¹⁸ *Prosecutor v. Kanyarukiga*, Case No. ICTR-02-78-T, Decision on the Prosecution Motion for Site Visits (TC), 19 October 2009, para. 6; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on the Prosecutor's Motion for Site Visits in the Republic of Rwanda (TC), 29 September 2004, para. 4.

¹⁹ See *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Nzuwonemeye's Motion for On-Site visit (TC), 27 May 2008, para 4.

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14. The Chamber notes that distances and visibility at a number of locations were matters contested during the trial, and the Chamber is satisfied that a site visit will be instrumental to the discovery of the truth and the determination of the present case. The Chamber therefore concludes that a site visit is in the interests of justice.

Modalities

15. The Prosecution requested that the site visit take place within the first two weeks of July 2011.²⁰ The Defence requested that the site visit take place during the third week of October 2011, due to “serious scheduling difficulties” during the first two weeks of October 2011.²¹ The Defence, however, did not provide further explanation as to the “difficulties” it has with regard to the first two weeks. The Chamber accordingly scheduled the site visit to take place the first week of October 2011, so as to avoid a delay in the filing of the closing briefs and hearing of the closing arguments.²²

16. The Chamber has considered the submissions of the Parties with respect to the locations it wishes the Chamber to visit and sets out in Confidential Annex A the sites it deems relevant and probative, and which will form part of the itinerary. The Chamber notes that this itinerary is subject to the assessment of the enumerated locations by the ICTR Safety and Security Unit in Kigali.

17. The Chamber recalls that “detailed records of [the] Trial Chamber’s site visits should normally be kept. The purpose of a site visit is to assist a Trial Chamber in its determination of the issues and therefore it is incumbent upon the Trial Chamber to ensure that the parties are able to effectively review any findings made by the Trial Chamber in reliance on observations made during the site visit.”²³ The Chamber adopts the “Rules of Procedure and Conduct for the Site Visit” contained in Annex B of this Decision. The Chamber notes that written, audio and video records of the site visit will be kept.

²⁰ Prosecution Submission, para. 22.

²¹ Defence letter.

²² Scheduling Order, para. 7.

²³ *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-T, Supplemental Decision Regarding the Site Visit in Rwanda and Itinerary of Sites to be Visited (TC), 3 March 2010, para. 15; *Karera v. Prosecutor*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009, para. 50 (with further references). See also *Zigiranyirazo v. Prosecutor*, Case No. ICTR-01-73-A, Judgement (AC), 16 November 2009, para. 36.
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FOR THESE REASONS, THE CHAMBER

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ORDERS the site visit to commence on 3 October 2011 at 8:30 a.m, through 7 October 2011;

ISSUES a composite confidential itinerary, attached hereto as Confidential Annex A, for the site visit in the Republic of Rwanda;

ORDERS that the Rules of Procedure and Conduct attached to this Order as Annex B shall govern the protocol of the site visit;

INSTRUCTS the Parties to inform the Chamber by 9 September 2011 of those persons from their teams who will attend the site visit and provide their full names and contact details;

INSTRUCTS the Registry to provide by 9 September 2011 the number, full names and contact details of all persons from the Registry who will attend the site visit; and

REQUESTS that the Registry make all the necessary arrangements, in liaison with the Chamber and the Parties, to facilitate the implementation of this Decision, and requests the Registry, following the site visit, to submit a confidential report of the visit to the Parties and the Chamber.

Arusha, 6 September 2011, done in English.

Lee Gacunga Muthoga
Presiding Judge

Seon Ki Park
Judge

Robert Fremr
Judge

[Seal of the Tribunal]

